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WAR — ALIEN ENEMIES — EXPATRIATED CITIZENS OF BELLIGERENT COUNTRY AS PRISONERS OF WAR. — A German by birth who resided in England had received a formal discharge from German nationality under a law of 1870. (Grotefends Gesetzsammlung, p. 354, § 13.) Though he continued to live in England, he never became an English citizen. In 1913 a German statute was passed (1913 Reichsgesetzblatt-Deutschland, Nr. 46, §§ 8, 13) allowing former Germans or their descendants, upon certain conditions, to resume citizenship without returning to Germany. In August, 1915, he was interned as a prisoner of war under an order issued by authority of the Home Secretary and applied for a writ of *habeas corpus*. *Held*, that the application be denied. *Rex v. Liebmann*, 1915, 38 Wkly. Notes, 320, 50 L. J. 443.

The same decision was reached in an earlier case where the German had been automatically expatriated on account of an uninterrupted absence from Germany for ten years. In this case the same law which annulled the citizenship gave the privilege of resumption. *Ex parte Weber*, 1915, 31 T. L. R. 602.

By virtue of the King's prerogative, prisoners of war are denied a writ of *habeas corpus*. *Rex v. Schiever*, 2 Burr. 765; *The Three Spanish Sailors*, 2 W. Bl. 1324. But the court was, very correctly, unwilling to admit that such prerogative extends further. See *Jones v. Seward*, 40 Barb. (N. Y.) 563, 566-570. Cf. DESPAGNET, LE DROIT INTERNATIONAL PUBLIC, § 668. It did declare, however, that alien enemies interned in England were prisoners of war. While the law is clear as to who may claim the privilege of being a prisoner of war, it has not before been decided whether, under any conditions, an alien enemy may claim a greater privilege. See 2 MALLOY, TREATIES, SECOND HAGUE CONVENTIONS, 2281, articles 1, 2, 3, 8, 29, 31. One authority, at least, appears to deny that a non-combatant alien enemy may be made a prisoner of war. See DESPAGNET, LE DROIT INTERNATIONAL PUBLIC, § 545. No matter what the exigency may be, certainly no one can be made a prisoner of war who is neither combatant nor alien enemy. See *Johnson v. Jones*, 44 Ill. 142, 152; *Ex parte Mulligan*, 4 Wall. (U. S.) 2, 131. See also 6 WEBSTER'S WORKS, 427, 432. Now an alien enemy is one who owes allegiance to an adverse belligerent nation. See *Dorsey v. Brigham*, 177 Ill. 250, 256, 52 N. E. 303, 304. See CO. LITT., 129 b; 1 KENT, 73. But by the laws of Germany both prisoners were freed from their allegiance. See LAWS OF 1870, *supra*. And England recognizes the right and possibility of expatriation even in her own citizens. 35 & 36 VICT., c. 39; 33 & 34 VICT., c. 14, § 4. The prisoners, therefore, in the cases reported, were not alien enemies. But the court argued that as former Germans have privileges in resuming citizenship, not granted to foreigners, they have "not become entirely divested of the rights belonging to a natural born German." Yet special privileges of naturalization are granted to former citizens by many European countries. See CALVO, LE DROIT INTERNATIONAL, France, §§ 587, 597, Italy, §§ 604, 606, Belgium, § 612. It is difficult to see how such a privilege can bring under allegiance to a country an expatriated person entirely out of its jurisdiction.

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## BOOK REVIEWS

BRACON DE LEGIBUS ET CONSUETUDINIBUS ANGLIAE. Volume I. Edited by George E. Woodbine, Assistant Professor of History in Yale College. New Haven: Yale University Press. 1915. pp. xiv, 422.

We have here, at last, in sumptuous dress, the first volume of Professor Woodbine's long expected edition of Bracton. The value of this remarkable treatise to scholars has never been fully appreciated, owing to the unfortunate manner in which the text has been edited. The original edition, first issued by

Tottel, in 1569, was sumptuous, but uncritical. The edition edited by Sir Travers Twiss, in the Rolls series, was equally beautiful and at least equally uncritical. We have at last an edition which is to provide us for the first time with a scholarly text. That this work should have been left for an American scholar is no discredit to the scholarship of England; for, as Sir Frederick Pollock generously recognizes, the law of which it is the first flower is our law too.

This volume contains a preliminary discussion of the manuscripts and a justification of the author's choice. Two volumes of text and two volumes of translation, with a sixth volume containing the editor's introduction, will complete the work.

The author's critical apparatus consists of forty-six manuscripts now accessible to scholars; two, or possibly three manuscripts once known to exist cannot now be found, and are probably buried in some of the great private libraries. Each of the forty-six manuscripts is here examined carefully, described as to its size and external form, its completeness, and its collation. Not more than two or three of these manuscripts have ever before been collated in any of the previous editions of the work. The first task of the author was to fix the pedigree of every manuscript which could possibly be of use in establishing the text. For this purpose, a careful examination is made in several directions. The order of the quires as they occur in the different manuscripts is compared; but the editor finds that the omissions and misplacements found in several of the best manuscripts are almost entirely referable to a misplacement of the quires in one of the earliest and best manuscripts, which has served as their exemplar. This is the Digby manuscript, of which Maitland thought so highly that in his "Bracton and Azo" he named it as probably the best starting point for the new text.

Before entering upon the textual comparison, the editor notes the curious fact that the manuscripts were multiplied rapidly for a half century after the first publication of the treatise, and after that time no more were prepared. The length of the treatise and the changes in the law by legislation led to its being superseded at the end of a half century by the abridgments and imitations which took its place for the lawyers of the fourteenth and fifteenth centuries. During this half century there were innumerable variations in the surviving manuscripts. Many of these variations may be eliminated as common errors of copyists or individual idiosyncrasies of some particular owner, but every manuscript has its peculiar variations. None of those now existing are, the author thinks, closer to the original than its grandchildren, and perhaps separated by a greater distance. Many of the best of them were copied by several hands from several exemplars; like the Digby manuscript, in which six hands may be traced. The author differs from Maitland in his estimate of the value of the Digby manuscript. That some good manuscript was taken apart, and its parts divided among different copyists for the purpose of copying rapidly, as Maitland had conjectured, there was no reason to doubt; but that it was the autograph manuscript of Bracton himself which furnished the exemplar, further study proves unlikely. Indeed, two manuscripts at least must have contributed to the making of the Digby, since in one of the hands it presents a text which follows a different line from that of the other copyists. Most of the peculiarities noted by Maitland, and believed by him to show its closeness to the original, Professor Woodbine points out as common to this and other manuscripts. The Digby does, indeed, in his opinion, stand at the very head of one line of text; but he finds, on careful examination of the manuscripts, that we have at least three distinct lines of text, and that the Digby represents not the earliest but one of the later lines.

Professor Woodbine's internal study of the manuscripts begins with a careful collation of a number of passages, some long and some short, collated in all the available manuscripts. Starting with this careful comparison, the editor

finds sufficient evidence to make a preliminary classification of the manuscripts according to the one of the three lines of text followed. Many manuscripts follow now one and now another line, according to the exemplar used by the copyist; several exemplars were often used in making one copy.

Professor Woodbine explains, in one of the most illuminating descriptions in print, the work of the editor of an ancient manuscript: noting the sources of common error, the method of collation, and the method of discriminating between characteristic and accidental variations. The actual collation of the text of the passages chosen for that purpose occupies seventy-three pages of the volume; the grouping of the manuscripts, not in general, but in each of the collated passages, occupies the next fifty pages; and a graphical representation of the grouping requires fifty pages more. The editor then shows in graphical form, in a very interesting series of tables, the amount of difference from the standard text in each manuscript, placing in separate columns the errors due to imperfect copying and the errors which are plain mistakes. In this way the author is able to determine which are the carefully and which the carelessly written manuscripts; not that this, of course, determines the excellence of the text, for a text of the very highest correctness might be copied by a careless copyist, but because it gives a general line on the method pursued by the transcribers of the various manuscripts. Finally, the author makes a very careful study of the *addiciones*, as they occur in various manuscripts, partly to distinguish the additions made by Bracton himself from those which crept into the text after he had left it. The division of the treatise into books, as to which the manuscripts differed most fundamentally, the editor dismisses as unimportant for settling the text, because, as Maitland had already said, Bracton himself made no such divisions, although he probably contemplated making it upon the completion of his treatise.

The final conclusion of the author as to the pedigree of the manuscripts appears to be that one line starts from an original text first published by Bracton; that Bracton thereafter prepared and published a second edition, from which another line of manuscripts starts; and that a very early copyist, by comparison of the two editions, started a third line, which combines some of the characteristics of both. Of the earliest text he prefers on the whole the Bodleian manuscript (Bodley 170) called by him OB. This is in the late thirteenth century court hand and is subject to a correction by two or three other manuscripts of the same line. For the later text the Digby manuscript, also in Bodleian library, called by him CA, furnishes the best text, except where one of the copyists at the end has followed an exemplar of another line. Several manuscripts are available for correcting and controlling errors in the Digby. For the third, or composite line of manuscripts, there are two or three good exemplars. A text based upon these few manuscripts, and collated with half a dozen others, should furnish the nearest possible reproduction of Bracton's own words.

Of the work of the editor one can speak only in the highest praise. To Professor Woodbine's training, patient investigation, careful judgment, scholarly care, the reviewer can only render uncritical homage. Exactly to estimate the error in his conclusions — error must occur, of course, in every human accomplishment — no one in America has the critical knowledge. Has anyone in England? We wonder. The reviewer can say no more than this: where Professor Woodbine states his facts and conclusions in full, his opinions seem convincing; where his conclusions are given without a full array of facts, one therefore confidently believes them to be sound.

We shall probably never have another critical edition of Bracton. It is not too much to say of Professor Woodbine's work that, so far as this volume is concerned, we shall not need one.

J. H. BEALE.